

MAX BAUCUS
MONTANA

WASHINGTON, DC
(202) 224-2851

MONTANA TOLL FREE NUMBER
1-800-332-6106

United States Senate

WASHINGTON, DC 20510-2602
February 18, 2010

INTERNET:
max@baucus.senate.gov
<http://www.senate.gov/~baucus>

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
US Army Corps of Engineers
441 G. Street, NW
Washington, DC 20314-1000

Dear Assistant Secretary Darcy:

I am writing to you regarding the January 23, 2008 memo establishing priorities for Fiscal Year 2008 Levee Safety Program Inspection Funds. Specifically, I would like you to provide additional justification for your policy determination that levee certification is a non-Federal responsibility and that these certifications will not be funded using Federal funds.

Throughout Montana and the rest of the country, non-Federal sponsors for Federally – constructed levees are struggling to work through the FEMA floodplain re-mapping process and the associated requirements for levee certification. I recognize the need to ensure that accurate information is provided to property owners and decision-makers regarding the residual risk of flooding that exists behind a flood control structure and to ensure that such properties are adequately insured to prevent excessive disaster payments by the Federal government. I understand that FEMA's map updates will portray a floodplain area protected by a certified levee as an area with 1 in 100 year flood protect and a floodplain area that is protected by an uncertified levee as unprotected.

Therefore, the levee certification process is a critical step in the nation's efforts to ensure that our existing flood control system offers viable protection for life and property. First and foremost, from an engineering perspective, it is important that any flaws or shortcomings in our existing levees are identified and repaired before a disaster, not after. Second, because the certification of a levee is the determining factor in how a particular floodplain will be mapped and what insurance requirements will apply, it is important that communities have access to a clear, reasonable process to obtain this certification.

Prior to January 2008, the Corps performed levee certifications for Federally – constructed levees. On January 23, 2008, a memorandum regarding prioritization of fiscal year 2008 funds was released by your office, which precluded the Corps from using fiscal year 2008 funds to perform levee certifications and stated that levee certification is a non-Federal responsibility. Please provide your justification for this abrupt change in policy, in addition to a cost analysis of the impact of this change to non-Federal sponsors. Please describe the outreach that was performed prior to and after this decision to ensure that levee managers throughout the country were properly informed. Please articulate, in detail, the options available for levee

WATER POLICY INTERIM
COMMITTEE
MARCH 10, 2010
EXHIBIT 5

BILLINGS
(406) 657-6790

BOZEMAN
(406) 596-9104

BUTTE
(406) 762-6700

GLENDIVE
(406) 366-7002

GREAT FALLS
(406) 761-1574

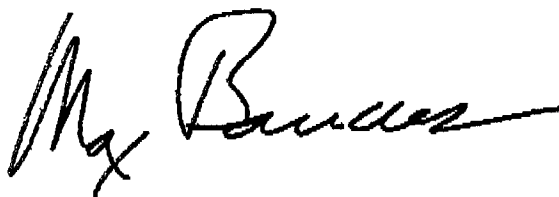
HELENA
(406) 449-5480

KALISPELL
(406) 756-1150

MISSOULA
(406) 329-3123

districts seeking certification of their Federally-constructed levee. In determining the effective date of your new policy, was a transition plan considered and/or implemented for those levees that were already moving through the remapping process and were anticipating that the certification process would be conducted by the Corps? Was consideration given to the differing technical and financial capabilities of levee districts throughout the country to ensure that small, rural communities are not adversely impacted by this policy change when compared to large communities? Has the Corps considered the lack of engineering resources in certain parts of the country as a planning factor for implementing the new January 2008 policy? The January 23 memo states that the Corps can perform levee certification on a reimbursable basis. How do the limitations adopted in 31 U.S.C. 6505, as amended, affect the ability of the Corps to perform these certifications? Have levee districts in small, rural communities elected to pay the Corps to perform levee certifications since January 2008? Please describe how this decision was and continues to be coordinated with the FEMA remapping process. Thank you for your attention to this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Max Baucus". The signature is fluid and cursive, with a long horizontal stroke at the end.